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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,734	10/15/2003	Brian C. Dais	J-3329	5391

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/685,734

Applicant(s)

DAIS ET AL.

Examiner

James N Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 and 30 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13, 17-28 and 31 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/15/03, 12/17/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 1, 24, 29 and 31 are objected to because of the following informalities: The claims contain an apparent grammatical error, "(we)," before the phrase, "a first orientation." Examiner notes the error also appears in the Specification in paragraphs [0013], [0015], [0016], [0017], [0042] An additional error "we.e" appears in the Specification in paragraphs [0008] and [0046], [0051], [0053], [0062] and [0067]. Finally, page 17 of the Specification, line 1, contains the grammatical error, "WE."

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8, 13 and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker US 6,152,318.

Walker '318, in the embodiment of figs. 12-17, teaches a container with selective venting, comprising a bowl (126), lid (128), continuous sealing bead (129), vent region (136), applicable in a plurality of different orientations, including a first orientation in fig. 14b, and a second venting orientation in fig. 14a. The ridges appear to be V-shaped in cross section.

4. Claims 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Warner US 76,008.

Warner '008 teaches a fruit jar, comprising a bowl (A) with a rim about the upper periphery, a lid (B) in a first orientation forming a continuous seal with gasket (C), and a second orientation offset about a vertical axis allowing ventilation of the container, shown in figure 3. The lid can be turned either 90 degrees, or 180 degrees, about the axis from an initially sealed position to the position shown in figure 3.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 8 and 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox US 1,216,031 in view of Oh US 6,763,960.

Wilcox '031, in the embodiment of figs. 4-5, teaches a container for cigars with means for selective venting of the container, comprising a repositionable lid with holes (21) and container rim holes along wall portions (15), (16), (17), and (18). One position, aligning holes (21) along wall portion (18) that does not contain any holes, provides a sealed container.

Wilcox '031 does not teach a bead for sealing the container. However, it would be desirable to add a sealing rim. Examiner notes the can was made in 1917, before the practical introduction of thermoplastic lids, known to enhance sealing properties through the provision of sealing beads.

Oh '960 teaches a thermoplastic closure, with a substantially V-shaped sealing rim with a sealing bead (54) disposed on the inner surface of the V-shaped lip. Examiner notes the sealing rim could be applied to the container of Wilcox '031 and with a reasonable expectation of success because the rim outer wall skirt (42) extends well below the plane level of the sealing bead. The vent holes could be placed in the skirt wall and still function properly.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Wilcox '031, forming it of thermoplastic and providing it with a sealing bead, as taught by Oh '960, motivated by the benefit of sealing the container when the lid is in a fully sealed position.

Art Unit: 3727

7. Claims 7 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox US 1,216,031 in view of Oh US 6,763,960, as applied above to claim 1, in further view of Massey US 2,162,853.

Wilcox '031 does not teach a recessed rim portion.

Massey '853 teaches means for selective venting, and furthermore teaches the functional equivalence between alignable holes (2) along a container rim, and recessed rim portions (2') along the rim top edge.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container rim of Wilcox '031, providing recessed rim portions in place of holes, motivated by the functional equivalence taught by Massey '853.

8. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker US 6,152,318 in view of Laib et al. US 6,367,651.

Walker '318 does not teach parallel raised ridges protruding from the base of the bowl.

Laib '651 teaches a container with ridges protruding from the base of the bowl. The benefit of these ridges is to trap condensate into discreet pools. See col. 6, lines 13-23.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Walker '318, providing the ribs and scallops taught by Laib '651, motivated by the benefit of trapping condensation into discrete pools.

Regarding claim 12, Examiner cites Official Notice that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the peripheral wall of the bowl/container of Walker '318, providing scallops.

***Allowable Subject Matter***

9. Claims 5-6 and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3727

10. Claims 29-30 are allowed.

**Conclusion**

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:  
See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



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